

## INITIATIVE 651

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 651 to the People is a true and correct copy as it was received by this office.

1       AN ACT Relating to gaming by tribes; and adding new sections to  
2 chapter 9.46 RCW.

3 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4       NEW SECTION.   **Sec. 1.** A new section is added to chapter 9.46 RCW  
5 to read as follows:

6       The State shall adopt a compact authorizing full class III gaming  
7 under the Indian Gaming Regulatory Act of 1988 (102 Stat. 2467; 25  
8 U.S.C. sec. 2710) with all Indian tribes with Indian lands within the  
9 external boundaries of the state.

10       (1). The public policy and law of the state is that all Indian  
11 tribes with Indian lands within the state are entitled to offer  
12 unrestricted Class III gaming under a compact as defined under the  
13 Indian Gaming Regulatory Act of 1988. For all Indian tribes with  
14 Indian lands within the external boundaries of the state that do not  
15 have a compact with the state as of November 7, 1995, Washington State  
16 shall be deemed to have executed a compact stating this public policy  
17 within fifteen days of the certification of the passage of this section  
18 by the secretary of state. When the agreed upon terms of existing  
19 compacts with other Indian tribes expire, those Indian tribes may

1 ratify the compact executed by the state as the result of this section.  
2 The compact must not have market restrictions as to the operation of  
3 class III gaming on Indian lands in the state with regard to size of  
4 wager, size of facility, hours of operation, number of games, number of  
5 facilities, or type of gaming employed, and there must not be market  
6 restrictions on the use of player-activated electromechanical gambling  
7 devices. The compact stating this public policy and governing class  
8 III gaming is the compact required under section 2 of this act.

9 (2). The compact must provide that all of the Indian tribes who  
10 ratify this compact shall make a monthly payment of ten percent of the  
11 net gaming revenues from the utilization of all player-activated  
12 electromechanical gambling devices into a fund created and managed by  
13 FTS Enterprises, an intertribal entity established as an extension of  
14 tribal governing bodies under the laws of the participating tribes.  
15 "Net gaming revenues" is defined as gross revenue minus all revenues  
16 paid or allocated as prizes. The compact shall provide that the state  
17 auditor and two other persons who are not members of any Indian tribe  
18 with Indian lands in Washington State and, who are registered voters in  
19 the state, be appointed as directors of FTS Enterprises upon the  
20 creation of the fund. The state auditor may decline the appointment if  
21 he is otherwise precluded by the laws of the state from accepting the  
22 appointment; in which event the existing directors must appoint a  
23 replacement.

24 (3). The compact must provide that FTS Enterprises distribute the  
25 fund's revenue annually on a per capita basis minus operating expenses  
26 to all of the registered voters in the state who have voted in the most  
27 immediate previous statewide general election. FTS Enterprises shall  
28 have its records audited by a certified public accounting firm,  
29 annually. The audit shall be included in an annual report published  
30 and presented to the state auditor.

31 (4). If at any time after the effective date of this act, the  
32 state authorizes, by statute, rule or regulation, the operation of any  
33 player-activated electromechanical gambling device, other than one  
34 licensed and in actual operation before March 1, 1995, anywhere within  
35 the state not on Indian lands, or not authorized by this act, then the  
36 financial obligations of the Indian tribes under the compact signed as  
37 a result of this act shall cease. After final distribution is made,  
38 further payment by the tribes and distribution to the registered voters

1 must not from that time occur. In such event, all other provisions of  
2 the compact must remain in full force and effect.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.46 RCW  
4 to read as follows:

5 The compact adopted under section 1 of this act must read as  
6 follows:

7 **Tribal State Compact for Class III Gaming by Tribes with**  
8 **Indian Lands in the State of Washington**

9 **RECITALS**

10 **WHEREAS** the voters of the State of Washington have set forth, by  
11 Initiative, the clear public policy that all Indian tribes within the  
12 state are entitled to offer unrestricted Class III gaming under a  
13 compact defined by the federal Indian Gaming Regulatory Act of 1988;  
14 and

15 **WHEREAS** the federal Indian Gaming Regulatory Act of 1988 provides  
16 that a compact governing the operation of Class III gaming shall be  
17 submitted to the Secretary of Interior and published in the federal  
18 register;

19 **ACCORDINGLY**, the State of Washington agrees to the following terms  
20 and conditions upon the ratification of this compact by any Indian  
21 tribe with Indian lands within the state.

22 **PART I. Effective upon Ratification by Tribe**

23 This compact is entered into by the State of Washington and any  
24 federally recognized Indian tribe with Indian lands within the exterior  
25 boundaries of the State of Washington that ratifies this compact in  
26 accordance with the tribe's constitution and applicable tribal laws and  
27 regulations. A Compact already in existence between a tribe and the  
28 State of Washington remains in effect until the compact expires by its  
29 express terms, after which time, the tribe may ratify this Compact.

30 **PART II. Authorized Class III Gaming**

1       **(1). Authorization of games.** A tribe may offer any game with the  
2 elements of prize, consideration, and chance that (a) is authorized by  
3 a tribe pursuant to a valid tribal ordinance that is approved by the  
4 National Indian Gaming Commission; and (b) is played according to  
5 specific rules, the copies of which are available to patrons. There  
6 must not be market restrictions as to the operation of Class III gaming  
7 including, but not limited to, size of wager, size of facility, hours  
8 of operation, number of games, number of facilities, or type of gaming  
9 employed.

10       **(2). Authorization of Gambling Devices.** A tribe is entitled to  
11 use any gambling device as defined by RCW ú 9.46.0241, as in effect on  
12 January 1, 1995, so long as a true and correct prototype of such device  
13 has been certified by, or would meet the technical equipment standards  
14 of authorized regulatory bodies in the State of Nevada, or the State of  
15 New Jersey, or the device is exempted from certification requirements  
16 under the laws of the State of Nevada, or the State of New Jersey. If  
17 Nevada or New Jersey changes its laws, the devices include devices that  
18 are or would be lawful in Nevada or New Jersey under the laws, rules,  
19 and regulations in effect on January 1, 1995.

20       **(3). Age Limitations.** A person under the age of eighteen (18) may  
21 neither participate in a gaming operation, nor be allowed on the Class  
22 III gaming floor during actual hours of operation. Should alcoholic  
23 beverages be offered on any portion of the gaming floor under  
24 applicable law, then a patron under the age of twenty-one (21) may not  
25 be permitted on that portion of the gaming floor during actual hours of  
26 operation.

### 27                   **PART III. VOTERS' DIVIDEND FUND**

28       **(1). Ten Percent Dividend.** The Tribes shall make a monthly  
29 payment of ten percent of the net gaming revenues from the utilization  
30 of all player-activated electromechanical gambling devices into a fund  
31 created and managed by FTS Enterprises, an intertribal entity  
32 established as an extension of tribal governing bodies under the laws  
33 of participating tribes with Indian lands in Washington State, who  
34 exercise their sovereign authority to participate in FTS Enterprises.  
35 "Net gaming revenues" is defined as gross revenue minus all revenues  
36 paid or allocated as prizes. Ratification of this compact by a tribe  
37 must include acknowledgment and consent to abide by the policies and

1 procedures of FTS Enterprises consistent with the terms of this  
2 compact. Specifically, the tribe consents to providing reasonable  
3 access to books and records necessary to conduct a verifiable audit of  
4 the tribal gaming operations to ensure that FTS Enterprises and tribes  
5 are meeting their obligations to the voters of the state under this  
6 compact. The state auditor and two other persons who are not members  
7 of any Indian tribe with Indian lands in Washington State, who are  
8 registered voters of the state, shall be appointed by the Board as  
9 Directors of FTS Enterprises upon the creation of the fund. The state  
10 auditor may decline the appointment if he is otherwise precluded by the  
11 laws of the state from accepting the appointment; in which event the  
12 existing directors must appoint a replacement.

13       **(2). Management & Supervision.** The compact shall provide that FTS  
14 Enterprises distribute the fund's revenue annually on a per-capita  
15 basis minus operating expenses to all of the registered voters in the  
16 state who have voted in the most immediate previous state-wide general  
17 election. The fund must allow those entitled to a distribution to  
18 donate their annual distribution payment to separate funds created by  
19 FTS Enterprises to support nonprofit, private programs in the areas of  
20 education, environmental protection, law enforcement, and natural  
21 resources restoration. FTS Enterprises shall have its records audited  
22 by a certified public accounting firm, annually. The audit shall be  
23 included in an annual report published and presented to the state  
24 auditor.

25       **(3). Exclusivity to Indian Country.** If the state authorizes, by  
26 statute, rule or regulation, the operation of any player-activated  
27 electromechanical gambling device, other than those licensed and  
28 actually in play on or before March 1, 1995, anywhere within the state  
29 not on Indian lands, or not authorized by this act, then the financial  
30 obligations of the Indian tribes under the compact signed as the result  
31 of the passage of this act cease immediately. After a final prorated  
32 distribution is made, further payment by the tribes and distribution to  
33 the registered voters must not from that time occur. In such an event,  
34 all other provisions of the compact must remain in full force and  
35 effect.

#### 36                   **PART IV. Regulation of Class III Gaming**

1       **(1). Licensing of Key Employees and Primary Management Officials.**

2       The tribe shall license, operate, and regulate all Class III gaming  
3       activities consistent with this compact, tribal law, and all other  
4       applicable federal law. The tribe shall enforce and administer the  
5       regulatory requirements that include but are not limited to the  
6       licensing of key employees and primary management officials of each  
7       Class III gaming activity or operation. The standards for licensing  
8       must be at least as restrictive as the standards required by the Indian  
9       Gaming Regulatory Act of 1988 and the regulations of the National  
10      Indian Gaming Commission for Key Employees and Primary Management  
11      Officials in effect for Class II gaming activities, as of March 1,  
12      1995.

13      **(2). Accounting/Auditing.** Accounting records must be kept on a

14      double entry system of accounting, maintaining detailed, supporting,  
15      subsidiary records. The tribe shall retain the following records for  
16      at least three years: (a) revenues, expenses, assets, liabilities and  
17      equity for each location at which Class III gaming is conducted; (b)  
18      daily cash transactions for each Class III game at each location at  
19      which gaming is conducted, including but not limited to transactions  
20      relating to each gaming table bank, game drop box, and gaming room  
21      bank; (c) all markers, IOUs, returned checks, hold checks or other  
22      similar credit instruments; (d) contracts, correspondence and other  
23      transaction documents relating to all vendors and contractors; (e)  
24      records of all tribal enforcement activities; (f) audits prepared by or  
25      on behalf of the tribe; and (g) personnel information on all Class III  
26      gaming employees or agents, including rotation sheets, hours worked,  
27      employee profiles and background checks. The tribe shall comply with  
28      all applicable provisions of the Bank Secrecy Act, P.L. 91-508, 31  
29      U.S.C. úú 5311-5314 (1970).

30      **(3). Washington State's Role in Regulation.**

31      **(a) Investigative Services to be Made Available.** The Washington

32      State Gambling Commission shall conduct background investigations on  
33      primary management officials and key employees. Fees for the services  
34      shall not exceed the actual and reasonable costs incurred by the  
35      Commission for providing the service. The involvement of the state in  
36      conducting background investigations shall be voluntary; If the State  
37      of Washington chooses not to conduct the background investigations, or  
38      is otherwise unable to conduct the background investigations, the tribe  
39      may contract with other governments or private companies to provide the

1 services. The tribe shall provide information on primary management  
2 officials and key employees sufficient to allow the state to conduct  
3 its own background investigation as is necessary to make an independent  
4 determination as to suitability of these individuals, consistent with  
5 the standards imposed on and by the tribe. If the state disputes the  
6 active status of a licensee, the state may pursue the remedies  
7 available in Part V of this compact.

8 **(b) State Inspection.** The state may inspect any aspect of the  
9 tribal gaming operations. The state presence, however, must not be  
10 conducted in a manner which interferes with the day-to-day operations  
11 of the gaming facility. A representative authorized in writing by the  
12 Governor of the state, or his designee, shall have the right to  
13 inspect, in the accompaniment of a designated tribal representative,  
14 all tribal Class III gaming facilities and all tribal records related  
15 to Class III gaming, subject to the following conditions:

16 (i) For public areas, the representative may inspect at any time  
17 without prior notice;

18 (ii) For private areas not accessible to the public, the  
19 representative may inspect at any time during normal business hours,  
20 with twelve hours prior written notice; and

21 (iii) For inspection and copying of all tribal records relating to  
22 Class III gaming, the representative must give 48 hours, not including  
23 weekends, prior written notice to the Chairman of the tribe and  
24 specifically identify the records to be inspected and copied. However,  
25 the state shall pay for all reasonable costs related to the inspection  
26 and copying, and the tribe may prohibit the state from copying  
27 materials if the state is unable to maintain the confidentiality of the  
28 materials.

29 **(c) State Oversight & Consulting Services.** The state may provide  
30 additional oversight or consulting services by entering into a separate  
31 Memorandum of Agreement with the tribe providing for the services. In  
32 such an event, however, the fees charged by the state must not exceed  
33 fair and reasonable costs for providing the services.

## 34 **PART V. DISPUTE RESOLUTION**

35 **(1). Disputes Between Tribe and State** -Tribe or state may invoke  
36 the following dispute procedure if either believes the other government  
37 has failed to comply with a any requirement of the compact.

1       (a) **Notice.** The party asserting noncompliance must serve written  
2 notice to the Chairman of the tribe and the Governor of the state. The  
3 notice must identify the specific provision of the compact alleged to  
4 have been violated and must specify the factual basis for the alleged  
5 noncompliance.

6       (b) **Negotiated Resolution.** Within thirty (30) days of Notice under  
7 subsection (a) the tribe and state shall meet and make every good faith  
8 effort to resolve the dispute amicably, through direct negotiation. If  
9 the direct negotiation is futile or unsuccessful, the tribe and state  
10 agree to seek an independent mediator, the selection of which must be  
11 mutually agreed upon. Such mediator shall attempt to find a mutually  
12 acceptable resolution to the dispute.

13       (c) **Formal Mediation.** A controversy or claim arising out of or  
14 relating to this compact, or the breach of this compact, wherein  
15 negotiated resolution pursuant to subsection (1)(b) of this Part V is  
16 unsuccessful, the dispute must be submitted to formal mediation  
17 supervised and administrated by Judicial Arbitration and Mediation  
18 Services, through its Seattle office. The mediator must be selected by  
19 Judicial Arbitration and Mediation Services unless otherwise agreed to  
20 by tribe and state. The mediator shall have at a minimum, three years  
21 experience as a federal magistrate, federal district court or appellate  
22 judge, with specific experience involving Indian tribes as litigants.  
23 The mediation is not binding on the parties, unless prior to mediation,  
24 both parties agree, in writing, to be bound by the mediator's decision.  
25 The tribe and state shall each bear its own legal fees and expenses  
26 unless, in the opinion of the mediator, the position of one party is  
27 meritless, in which event the losing party shall reimburse the  
28 prevailing party for such fees and expenses. If the preferential use  
29 of Judicial Arbitration and Mediation Services violates any law, or is  
30 otherwise not available, the government seeking relief is deemed to  
31 have exhausted their remedies and may proceed to federal court as set  
32 forth in section (2) of this Part V.\_

33       (2). **Consent to Jurisdiction of Federal Court.** If significant  
34 disputes arise from this compact that cannot be resolved by negotiated  
35 resolution or mediation, tribe and state agree to submit the issues to  
36 federal court for determination.

37       (a) **Tribe's Limited Waiver of Sovereign Immunity.** By this  
38 agreement, the tribe does not waive, limit, or modify its sovereign  
39 immunity from suit except as provided in this section. The tribe



1 expressly waives in a limited manner its immunity from suit and  
2 consents to be sued in the United States District Court for either  
3 district of Washington, or in the District Court for the District of  
4 Columbia. The state must exhaust the remedies under this Part V before  
5 pursuing any action in federal court. This waiver is expressly limited  
6 to permit judgments or awards only to the extent of prospective  
7 equitable relief that the tribe comply with the court's interpretation  
8 of the compact.

9 (b) **State's Limited Waiver of Sovereign Immunity.** By this  
10 agreement, the state does not waive, limit, or modify its sovereign  
11 immunity from suit except as provided in this section. State expressly  
12 waives in a limited manner its immunity from suit, including any  
13 immunity protected by the Eleventh Amendment to the Constitution of the  
14 United States, and consents to be sued in the United States District  
15 Court for either district of Washington, or for the District Court for  
16 the District of Columbia. The tribe must exhaust the remedies under  
17 this Part V before pursuing any action in federal court.

## 18 **PART VI. MISCELLANEOUS**

19 (1). **Complete Agreement.** This compact is the entire agreement  
20 between the governments and supersedes all prior agreements, whether  
21 written or oral, with respect to the subject matter of this compact.

22 (2). **Severability.** In the event that any section or provision of  
23 this compact is held invalid by any court of competent jurisdiction, it  
24 is the intent of the parties that the remaining sections or provisions  
25 of this compact continue in full force and effect. If the Department  
26 of Interior, on behalf of the United States, determines that changes in  
27 this compact are necessary to be consistent with federal law, this  
28 Compact is deemed modified to the extent necessary to conform to  
29 federal law

30 (3). **Jurisdiction.** Nothing in this compact may be interpreted to  
31 alter jurisdiction that the state might currently have on Indian lands  
32 of a Washington tribe. This compact may not be interpreted to preclude  
33 a subsequent retrocession agreement, crossdeputization agreement, or  
34 other intergovernmental agreement affecting jurisdiction.

--- END ---